SASKATCHEWAN
HUMAN
RIGHTS
COMMISSION

Developing an Anti-Discrimination Policy

A GUIDE FOR EMPLOYERS

Developing an anti-discrimination policy can assist organizations to cultivate a respectful workplace through the prevention and swift resolution of discriminatory incidents

The Saskatchewan Human Rights Commission

2009

Preface

One of the mandates of the Saskatchewan Human Rights Commission is to promote fair and respectful workplaces, which may include handling internal and external complaints of discrimination. As such, the SHRC is pleased to present this guide to developing an anti-discrimination policy.

This resource was developed in response to requests from employers and the public. It is comprehensive in nature and benefits organizations of all sizes. Its purposes are to:

- prevent discrimination in the workplace by helping organizations draft their own customized anti-discrimination policy;
- be both a template and explanatory guide in the development of an anti-discrimination policy;
- enhance the SHRC's early resolution processes by providing a guide for employers who agree to implement a workplace anti-discrimination policy as a term of settlement.

The template is unique because it:

- incorporates both human rights and occupational health and safety law to assist organizations developing one policy that encompasses all forms of discrimination and harassment;
- addresses systemic discrimination for those organizations developing a customized policy which recognizes and ameliorates systemic discrimination in a proactive way.

Employees have a right to work in a non-discriminatory environment and the public has a right to receive services in a non-discriminatory manner. We hope that this resource is of assistance to those organizations which are committed to the prevention and swift resolution of complaints of harassment and discrimination.

Judge David M. Arnot
Chief Commissioner

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DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 1: Anti-Discrimination Policy Template

This sample Anti-Discrimination Policy was prepared by the SHRC as a guide to help employers wanting to develop an Anti-Discrimination policy specific to their organization. Employers can use all or part of this template in the development of their policy.

This is an information resource only and in no way takes the place of legal advice appropriate to your organization.

1.0 PREAMBLE

The purpose of this policy is to cultivate a respectful workplace through the prevention and swift resolution of discriminatory incidents.

2.0 STATEMENT OF COMMITMENT

_____ [your organization – insert the name of your organization where "your organization" appears throughout this template] will treat all present and prospective employees and clients with respect and will maintain a work environment that is free from all forms of discrimination prohibited by *The Saskatchewan Human Rights Code*[1], including discriminatory harassment.

This policy will apply to all aspects of employment, including, but not limited to: recruitment, selection, placement, training and development, promotion, compensation, benefits, termination, provision of services, and the work environment.

_____ [your organization] will not tolerate, nor should its employees tolerate or engage in, any form of discrimination prohibited by *The Saskatchewan Human Rights Code*, including discriminatory harassment.

3.0 LEGAL FRAMEWORK

This policy focuses upon the rights and obligations set out in *The Saskatchewan Human Rights Code*. It also covers certain anti-harassment obligations set out in *The Occupational Health and Safety Act, 1993*[2].

4.0 DEFINITIONS

- The **Complainant** is the person who makes a complaint or brings a discrimination issue to the attention of the employer.

- The **Respondent** is the person whose behaviour is being complained about.

- **Discrimination** is the harmful treatment of an individual or group, based on certain personal characteristics. *The Saskatchewan Human Rights Code* establishes which characteristics (referred to as "prohibited grounds") are covered. They are: mental or physical disability, age (18 and over), religion or religious creed, family status (being in a parent-child relationship), marital status, sex (including pregnancy and gender identity), sexual orientation, ancestry, colour, race or perceived race, nationality, place of origin, and receipt of public assistance (provincial).

- Discrimination does not need to be intentional to be illegal. For example, a rule or policy may be developed for good business reasons but have an unintended, significant negative effect on a certain group of employees.

- **Harassment** is any behaviour that demeans, humiliates or embarrasses a person.

- **Discriminatory harassment** is harassment related to any of the prohibited grounds of *The Saskatchewan Human Rights Code*. This policy prohibits discriminatory harassment. In addition, it prohibits harassment based on physical size or weight and forms of personal workplace harassment prohibited by *The Occupational Health and Safety Act, 1993*.

  You are responsible for discriminatory behaviour if you know your behaviour is unwelcome to the recipient, or if a reasonable person ought to have known the behaviour is, or could be, unwelcome to the recipient. Harassment can include comments, conduct, or display of materials that directly target an individual or that create a "poisoned" or "unwelcoming" environment where the person feels psychologically or emotionally harmed, offended or intimidated based on any of the prohibited grounds.

  Discriminatory harassment includes:
  - Unwanted physical contact (touching, grabbing, hitting or pinching)
  - Written or verbal abuse or threats
  - Unwelcome remarks, jokes, slurs, or taunts about a person's ancestry, national or ethnic origin, sexual orientation, or any other prohibited ground
  - Insulting names or comments
  - Jokes, cartoons, or pictures
  - Practical jokes that embarrass or insult someone
  - Ignoring, isolating, or segregating a person or group
  - Negative treatment because of sex, ancestry, disability or any other prohibited ground of discrimination.

- **Sexual harassment** is a form of discriminatory harassment which includes unwanted sexual advances, unwanted requests for sexual favours, and other unwanted verbal, physical or written conduct related to sex.

- **Personal harassment** is any unwanted activity or behaviour directed at an individual that creates a negative, hostile, or unwelcoming environment for that individual. Personal harassment is not covered by *The Saskatchewan Human Rights Code* because it is not connected to one of the prohibited grounds of discrimination. However, this policy also prohibits the kind of personal harassment prohibited by *The Occupational Health and Safety Act, 1993*: "forms of personal harassment with respect to any matter or circumstance arising out of the worker's employment, which includes bullying and abuse of power."

- **Systemic discrimination** occurs when structural barriers or widespread stereotypes and assumptions bar certain groups of people from full participation in activities covered by *The Saskatchewan Human Rights Code*. These include: employment, education, public services, housing, contracts, trade unions, the purchase of property, publications, and professional trades and associations.

- **Prohibited Grounds** are those personal characteristics that are covered by *The Saskatchewan Human Rights Code* - see the definition of "Discrimination" above. They are called prohibited grounds because discrimination based upon those personal characteristics is prohibited.

- **Accommodation** is the process of making changes or adjustments that eliminate discriminatory barriers to equal participation and enjoyment of opportunities in employment, education, public services and other areas covered by *The Saskatchewan Human Rights Code*. Accommodation means focusing on inclusion and flexibility, rather than on just one way of doing things.

- **The Duty to Accommodate** requires employers, service providers, and others covered by *The Saskatchewan Human Rights Code* to accommodate needs related to a prohibited ground of discrimination, up to the point of undue hardship. This duty extends to both employees and clients. The duty to accommodate is a requirement to integrate diversity into public services and the workplace and may entail changing office space, policies, practices, and/or behaviours.

- **Undue Hardship** describes the limit on the duty to accommodate for employers, service providers, and others covered by *The Saskatchewan Human Rights Code*. Undue hardship can only be defined on a case-by-case basis as its determination relies on the specific facts of each case. The point of undue hardship is only reached when the employer or service provider has done everything possible to accommodate a need. Some factors which courts have considered in their determinations of what constitutes undue hardship include: a threat to health or safety, major economic impact, disruption to a collective bargaining agreement, diminished morale, interchangeability of workforce and facilities and size of workplace. This list is not exhaustive, rather demonstrative.

Undue hardship cannot be established by personal preferences based on ancestry, gender or any other of the prohibited grounds under *The Saskatchewan Human Rights Code*.

- **Mediation** is a collaborative process of communication and solution-seeking between the employer, employee, and the union where applicable, that leads to the resolution of a matter. This process can also be referred to as early resolution, settlement, conflict resolution, or alternative dispute resolution. Mediation is a consensual process, and should only be undertaken if the parties agree to it.

- **Investigation** is a fair and impartial fact-finding process which leads to a decision and action by the employer.

5.0 RIGHTS AND RESPONSIBILITIES

5.1 Employer

_____ [your organization] will not discriminate against any present or prospective employee, patron, client, contractor or volunteer, nor will _____ [your organization] tolerate discriminatory practices within the workplace, including systemic discrimination, .

_____ [your organization] will take all complaints seriously, investigate them, and promptly correct actions or practices determined to be discriminatory.

_____ [your organization] will maintain the confidentiality of employee records and investigation of complaints to the extent possible.

5.2 Managers and Supervisors

Managers and supervisors of _____ [your organization] are expected to lead by example and to act respectfully in dealings with employees, clients and patrons.
Managers and supervisors will ensure that employees are aware of this policy and will promote the policy at all times.

5.3 Employees

Employees have a right to a discrimination-free working environment.
Employees have an obligation not to participate in or encourage discriminatory practices.

5.4 Clients/Patrons

Clients and patrons have the right to receive non-discriminatory service(s).
_____ [your organization] values its employees' rights and in cases where clients or patrons do not treat employees with respect, _____ [your organization] will take steps to protect its employees from discrimination.

6.0 UNDERTAKINGS

6.1 Freedom from Discrimination

_____ [your organization] undertakes to provide a discrimination-free environment for people to work and conduct business in, and will take complaints of discrimination seriously if and when they arise.

6.2 Freedom from Discriminatory Harassment

_____ [your organization] undertakes to protect employees, clients and patrons from acts of discriminatory harassment pursuant to *The Saskatchewan Human Rights Code* and harassment pursuant to *The Occupational Health and Safety Act, 1993*.

_____ [your organization] will take such complaints of harassment seriously if and when they arise.

6.3 Freedom from Systemic Discrimination

_____ [your organization] undertakes to make every effort to review its practices and procedures in order to identify and eliminate systemic discriminatory practices or procedures that exist.

_____ [your organization] undertakes to monitor its organizational practices and procedures on an ongoing basis, in order to prevent systemic discrimination.

6.4 Accommodation

_____ [your organization] undertakes to assess and address the accommodation requests of its employees up to the point of undue hardship, where accommodation needs are based on one of the prohibited grounds of *The Saskatchewan Human Rights Code*.

6.5 The Accommodation Process

_____ [your organization] undertakes to discuss the accommodation request with the person whose needs are being addressed and with the union (if applicable), and to work co-operatively to determine the best and most appropriate accommodation possible, respecting the privacy of the parties.

7.0 APPLICATION OF POLICY

7.1 Who does the policy apply to?

This policy applies to owners, managers, all employees at all levels, applicants and candidates for employment.

7.2 When and where does the policy apply?

Discrimination will not be tolerated in any workplace setting or practice. Work-related conferences, business trips, social functions, contract sites, and job interviews are all examples of when this policy applies.

The Occupational Health and Safety Act, 1993 states that workplace harassment can arise outside of a worker's place of employment. It includes harassment directed at a worker at home or away from home if the harassment occurs with respect to any matter or circumstance arising out of the worker's employment.

8.0 COMPLAINT PROCESS AND PROCEDURES

8.1 How to make a complaint

A person wishing to make a complaint of discrimination can consult and file a complaint with _____ [the official within your organization designated to handle initial complaints]. In the event that a complaint is against the person designated to handle initial complaints, the complainant can consult and file with _____ .

8.2 Once a complaint has been filed

8.2.1 Investigation

Once a complaint has been filed an investigation will be undertaken immediately. In instances where there is an alleged respondent, as opposed to alleged systemic discrimination, the respondent will be notified immediately. The complainant and the respondent will both be interviewed along with any individuals who may be able to provide relevant information.

Where the alleged discrimination is an organizational practice or procedure, that practice or procedure will be investigated immediately. Where the investigation finds systemic discrimination within the organization, that practice or procedure will be changed promptly.

8.2.2 Mediation

_____ [your organization] supports resolving matters through mediation provided that it is consistent with organizational duties, obligations and needs. Mediation can only be undertaken voluntarily. If both parties agree to participate, matters may be resolved through mediation in the following circumstances.

- Once the matter has been investigated and _____ [your organization] has determined the facts of the case, _____ [your organization] may use meditation to develop appropriate solutions to the complaint; and
- In rare instances where the incident is an isolated event and the parties do not dispute the facts, _____ [your organization] will act diligently to ensure that matters are dealt with in a manner that ensures the safety and protection of everyone within the organization.

8.2.3 Timeliness

_____ [your organization] will investigate all complaints immediately and will work towards the prompt resolution and prevention of discriminatory acts and practices.

8.2.4 Fairness

All complaints will be investigated in the same manner with the aim of promoting fairness and equality.

8.2.5 Confidentiality and the Right to Privacy

_____ [your organization] will preserve the confidentiality of all individuals involved in a discrimination complaint. The preservation of confidentiality may be affected by the employer's duty to prevent discrimination in/at _____ [your organization] and by the alleged respondent's right to know the nature of the complaint being made against them and who has made it so that they can respond.

8.2.6 Protection Against Retaliation

Retaliation against any individual who has or may file a complaint, provide information relevant to a complaint, or testify in a proceeding under *The Saskatchewan Human Rights Code* is against the law and will not be tolerated by _____ [your organization].

8.2.7 Documentation

All meetings, discussions and steps taken in a mediation or investigation with respect to the alleged discrimination will be documented. Documents relating to a complaint will be kept in a secure location.

If the investigation fails to find evidence to support the complaint, no documentation concerning the complaint will be placed on the file of the respondent.

_____ [your organization] will retain all documentation for _____ months/years for informational purposes in the event that there is an internal appeal or a complaint filed with an outside agency.

8.2.8 Outcomes and Remedies

_____ [your organization] will act swiftly to ensure that the discriminatory practice is stopped as soon as possible and may remedy the situation in a number of ways. Where the investigation determines that discrimination has occurred or the matter has been successfully mediated, outcomes may include moving the respondent to another department, changing the respondent's job duties, or a letter of apology. Actions taken to remedy a discriminatory situation should not have a negative effect on the complainant. The main concerns of the employer will be to ensure that the discrimination ends and to restore workplace harmony.

8.2.9 Discipline

If the investigation indicates discrimination has occurred, the respondent will be disciplined appropriately.

8.2.10 Reporting Back

_____ [your organization] will provide both parties with written confirmation of findings, indicating either that the investigation found evidence to support the complaint and the resultant "next steps," or that there is no evidence to support the complaint and the matter has been closed.

If the complaint is settled through mediation, the parties will receive written confirmation of the agreed upon terms of settlement and documentation related to the process will be kept on the respondent's file.

When _____ [your organization] determines that systemic discrimination has occurred because of one of its practices or procedures, all members within _____ [your organization] will be notified in writing of the finding and the resultant change in practice or procedure.

8.2.11 Appeal Process

Within _____ days, either the complainant or the respondent may make a written request that an investigation be reviewed stating which aspect of the investigation is inadequate. The request must be submitted to _____ [that person within your organization designated to handle appeal requests] who will determine if the investigation is to be re-opened in order to address the concerns raised.

8.2.12 Right to File a Complaint with Outside Agency

This policy is meant to provide effective mechanisms for preventing and addressing discrimination in this workplace. However, every employee also has the right to file a complaint with an outside agency such as the Saskatchewan Human Rights Commission[4], the Workers' Compensation Board[5], or the Occupational Health and Safety Division of the Labour Standards Branch of the Saskatchewan Ministry of Advanced Education, Employment and Labour[6].

9.0 EFFECTIVE DATE

This policy takes effect _____, 200__.

_____

Signature of CEO – [Insert your organization's CEO's name]

SASKATCHEWAN HUMAN RIGHTS COMMISSION

DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 2: Handling Discrimination Complaints

It is important for employers to have procedures in place for handling complaints of discrimination in a fair, effective and timely manner. Even where organizations ultimately decide to bring in an outside mediator or investigator, their first steps can help restore workplace harmony and avoid costly or harmful mistakes.

These guidelines provide **general suggestions** on how to handle discrimination complaints internally. Please note, however, that **this is not legal advice.** The law is constantly evolving, and legal obligations will always depend on the facts of a particular situation. Please contact a lawyer for specific advice on specific situations

1.0 INTRODUCTION

There are many benefits to resolving discrimination complaints internally. For example, internal resolution:

- helps preserve working relationships
- is relatively fast and inexpensive
- ensures greater confidentiality and privacy
- has many business advantages.

At the same time, employers should be aware that their efforts to resolve a discrimination complaint could later become evidence at an arbitration or hearing. A flawed investigation or inadequate response could itself become the subject of a complaint. It is therefore important to proceed carefully, and to document all actions taken and all information gathered.

In addition, employers should never discourage employees from pursuing one of the other remedies available to them – whether that is a complaint to the Saskatchewan Human Rights Commission, the Labour Standards Branch or the Occupational Health & Safety Division; a claim to the Workers' Compensation Board; or a grievance under a collective agreement.

2.0 MEDIATION OR INVESTIGATION?

Mediation is generally a faster, more informal process than investigation and the parties may prefer it. It must be noted, however, that employers operate within a legal framework that gives them certain legal obligations including the duty to prevent and redress discrimination in the workplace. For this reason, **the employer will usually have to investigate the facts** and determine whether discrimination has occurred. The employer must also be careful to determine whether the behaviour complained of was an isolated incident or part of a larger pattern of discrimination that needs addressing in a proactive and preventive manner. Have other employees experienced

similar discrimination, or is there a problem that could lead to future discrimination if left unresolved?

Nevertheless, mediation may be appropriate in some situations where, for example, there is no dispute about the facts, or where an investigation has confirmed discrimination occurred and the employer wishes to work with the parties to develop appropriate solutions.

3.0 MEDIATION

3.1. What is Mediation?

Mediation can only be undertaken as a voluntary process in which the parties communicate with each other in an effort to develop a negotiated agreement (settlement) which is acceptable to both of them and which addresses the issues raised in the complaint. Mediation is sometimes referred to as an early resolution, conflict resolution, or settlement process. The communication process can take different forms. For example:

- face-to-face meetings facilitated by the employer or an outside mediator
- "shuttle negotiation" (the facilitator conveys information, viewpoints and proposals back and forth between the parties until agreement is reached)

Mediation can be the most effective and satisfying way of resolving complaints. It gives parties an opportunity to voice their concerns and helps the parties understand each other's perspectives. Mediation also gives the parties input into developing appropriate remedies. At the same time, the settlement must be workable from the employer's perspective and consistent with the employer's duty to prevent discrimination from re-occurring.

3.2 The Mediation Process

Mediation can take a variety of forms, and employers may wish to hire a trained mediator in complex cases. For employers who decide to conduct mediation themselves, a suggested process is outlined below.

1. Take complete written statements from the complainant and respondent. This step is the same in both mediation and investigation.
2. Mediation should be a consensual process. If the facts are clear (because there has been an investigation or because the parties agree on what happened), ask the parties if they wish to try mediation in order to develop an appropriate solution they can both agree on.
3. If their answer is yes, ask how they wish mediation to proceed (e.g. face-to-face meetings or shuttle negotiation).
4. Clarify the process and what can be expected from it. The focus will likely be on reaching a settlement acceptable to the parties and on preventing future discrimination.
5. Set ground rules for the discussion: for example, courtesy, commitment to the process, and no interruptions.
6. Facilitate the discussion. Document all meetings and actions.
7. Enable parties to develop a solution that is satisfactory to them and workable from your perspective. These may include an apology; a change in working conditions; adoption of a policy; staff training. You may wish to begin by outlining a range of possible options.
8. Put the agreement in writing and have it signed and dated by all parties.

4.0 INVESTIGATION

Both sides are entitled to a prompt but thorough investigation.

4.1. What is an Investigation?

Investigation is a fair, impartial, and unbiased process of fact-finding and analysis. Its purpose is to determine what actually happened, on a balance of probabilities. This is accomplished by gathering relevant evidence to support or disprove allegations. Ignore irrelevant information. Do not rely on hearsay (second-hand information) or opinions. Always obtain the best evidence possible: for example, an original document rather than a copy.

To avoid perceptions of bias at the investigative stage:

- be consistent in the treatment of everybody involved in the investigation;
- avoid editorial comments or personal remarks;
- ensure the investigation stays within the parameters of the allegations.

Typically, an investigation will have **five steps**.

1. **Interview** the complainant and respondent.
   Get a complete statement of concerns from the complainant. Include details of allegations and desired remedies. Record the complainant's state of mind (relevant to credibility and appropriate remedies). Obtain a full response in writing to each allegation.

2. **Plan** the investigation.
   - Establish what you need to find out. List the allegations and defenses. What evidence do you need to prove or disprove them? Who do you need to talk to? In what order? Write out the questions you want to ask witnesses.
   - List the documents you need to examine, and why.
   - Develop a written plan with time frames for each stage.

3. **Collect witness statements and other information**. Re-interview the parties if necessary.

4. **Analyze** the information.

5. Prepare a **report**.

4.2 Procedural Fairness

An investigation must meet the legal requirements of procedural fairness. Some principles of procedural fairness include:

- Complainants have a right to a full airing of their concerns.
- Respondents have a right to notice of an investigation.
- Respondents have a right to know what they are accused of (in enough detail to be able to respond adequately) and a right to respond to those allegations.

- Parties must be given an opportunity to respond to counter-allegations.
- Parties have a right to an objective and neutral information gatherer.
- Parties have a right to an unbiased decision-maker.
- Parties have a right to open-mindedness at the investigation stage.

4.3 Kinds of Evidence

There are several kinds of evidence the employer can collect during an investigation.

1. Direct (witness) evidence
   - from the complainant, respondent and witnesses;
   - what they can report from their own experience;
   - preferred in the form of signed statements.

2. Documentary evidence
   - e.g. payroll records, time sheets, correspondence, notes, file contents, calendars, electronic records, and e-mails relevant to the complaint.

3. Physical evidence
   - concrete, physical evidence relevant to the complaint, e.g. graffiti, cartoons, letters, gifts, drawings, photographs

4. "Similar fact" evidence
   - evidence of others being treated in the same way by the respondent
   - sometimes called evidence of pattern or practice

5. Evidence of credibility
   - evidence that is consistent with that of either the complainant or respondent, e.g. evidence that the complainant spoke about the problem to others, or appeared upset, soon after the behaviour complained about.

How much evidence is enough? Be thorough but timely.

4.4 Witnesses and Statement Taking

Witnesses may include:

- people who directly experienced or observed an action, including the parties;
- people to whom something similar happened ("similar fact" witnesses);
- witnesses of credibility, including people to whom the complainant spoke.

Interview witnesses separately, and ask witnesses to keep their evidence and their information about the complaint confidential.

1. Draft statements as you interview.
2. Ensure the statement is logical, legible and complete.

3. Ensure the statement reflects the witness's views, not your own.
4. Write in the witness's own words. Avoid jargon.
5. Don't lead witnesses. Ask general questions, then seek more detail on relevant points.
6. Be thorough. Ask for more details where appropriate, and explore inconsistencies.
7. Conclude by asking if the witness has anything to add to the statement.
8. Have the witness review the statement and initial any changes he or she makes.
9. Have the witness date and sign the statement, then witness the statement yourself.
10. Provide the witness with a copy of the statement. Store the original.

4.5 The Investigation Report

It is important to have a clear and accurate summary of the investigation and its findings. This report provides a basis for the employer's subsequent decisions. The report may also become evidence at a future proceeding, if the investigation or its outcomes are challenged.

1. Outline the complainant's allegations.
2. Outline the respondent's version of events.
3. List witnesses and outline their evidence.
4. Outline all other evidence (e.g. documents). List exhibits.
5. Analyze the evidence. Who does it support, on a balance of probabilities?
6. Outline conclusions, based on the information already summarized.
7. Recommend a course of action and specific remedies.
8. Attach statements and exhibits.

4.6 Taking Action

If an investigation supports the complaint, the employer must decide on actions to remedy the complainant's concerns and prevent discrimination from re-occurring.

Remedial measures will depend on the facts of the case and the damage done. Their purpose should be to provide the complainant with a safe, discrimination-free working environment and to redress whatever harm has been suffered. If the employer decides to discipline the respondent, that discipline must be consistent with general principles of employment law and with the collective agreement.

Preventive measures can include the development and enforcement of an anti-discrimination policy, staff training and education, and other activities that promote an inclusive and respectful workplace.

4.7 Follow-up and Feedback

Though confidentiality should be a high priority when handling complaints, it is important to give complainants enough feedback to let them know their complaint was taken seriously and acted upon. This does not necessarily mean giving complainants details of disciplinary action, for example, but it might mean talking to them about outcomes in general terms and explaining the limits imposed on information-sharing by the duty of confidentiality.

5.0 GOOD PRACTICES IN MEDIATION OR INVESTIGATION

Mediation and investigation are different processes, but share many strategies and recommended practices. The strategies most relevant to investigations are discussed in Part 6.

Before you receive a complaint

- Develop and distribute an anti-discrimination policy setting out principles, procedures, and consequences.
- Appoint a person to receive and handle complaints, tell your employees who that person is, and make the complaint process accessible and non-threatening. It is also helpful to name an alternate person in case the designated official is unable to handle the complaint.

When you receive a complaint

- Treat all complaints seriously.
- Respond quickly and effectively.
- Be objective and neutral. Ensure that the mediator or investigator is impartial.
- Observe the principles of procedural fairness. (See Part 6B.)
- Ensure confidentiality to the greatest extent possible. (See Part 4.)
- Document all actions in writing. Sign and date all documents, indicate from whom they have been received, and keep them in a safe, secure location with limited access.
- If the complainant decides to withdraw a complaint, record the withdrawal in a document. Note that the employer may still have a duty to act. (See Part 4.)
- Keep tight timelines in mind.

6.0 CONFIDENTIALITY, PROCEDURAL FAIRNESS AND THE DUTY TO ACT

Everyone involved in an investigation or mediation should preserve the confidentiality of information they acquire during the process. This practice will protect individual privacy and ongoing working relationships, and prevent damage to reputation where a complaint cannot be substantiated.

Confidentiality will also preserve the integrity of an investigation. If witnesses discuss their evidence with others, this can undermine the independence and reliability of witness statements to the employer. It should be noted, however, that there are a couple of significant limitations on an employer's ability to preserve confidentiality.

1. Employers have a duty of fairness towards respondents. People who are accused of discrimination have the right to know the nature of the complaint being made against them in sufficient detail that they can respond to the allegations.

2. Employers have a duty to prevent discrimination from occurring. For example, an employee may complain to her manager that employee B is harassing her, but ask the manager to keep the matter confidential because she does not want any action taken. The manager cannot keep the matter totally confidential because of the risk that employee B will harass other employees in the same way. The employer must explore the complaint and, if it seems to be well founded, take preventive action.

7.0 AVOIDING HUMAN RIGHTS COMPLAINTS

Process and timeliness are important. People sometimes file human rights complaints because they believe the employer failed to address discrimination complaints appropriately or adequately. Examples include:

- failure to take action on a complaint for several months because certain staff members were on vacation;
- failure to inform a complainant that the employer accepted her allegation of sexual harassment by a supervisor and had disciplined the supervisor;
- transfer of the complainant, rather than the respondent, to a less desirable working environment in order to separate the parties after a discrimination complaint was found to be valid;
- failure to address all of the complainant's allegations;
- discipline of an employee for her reaction to racial harassment by a customer;
- a dismissive or trivializing response to the complaint.

Avoiding such pitfalls can decrease the likelihood of complaints to an outside agency.

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DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 3: Alternative Statements of Commitment for Anti-Discrimination Policies

The following samples may be used instead of the Statement of Commitment provided in Section 1: Anti-Discrimination Policy Template of this guide. Alternatively, they can provide guidance in the drafting of a customized statement of commitment for your organization.

Sample 1

Individuals have a right to be treated with respect in the workplace and while conducting business. _____ [your organization], in exercising its responsibility as an employer and service provider, will endeavor at all times to provide a safe and healthy work and business environment which is supportive of both productivity and the dignity of every person, including employees and customers.

_____ [your organization] will not tolerate, nor should employees or patrons allow, discrimination, including harassment, that is illegal and likely to interfere with employees' ability to do their work and patrons' ability to carry out business. Discrimination may harm or compromise the health and safety of employees and patrons and will not be tolerated.

Sample 2

_____ [your organization] will not tolerate, and employees should not allow behaviour, including discrimination, harassment and sexual harassment, that are likely to undermine work relations or productivity, and to create an unsafe work place and/or place to conduct business.

Sample 3

_____ [your organization] is committed to providing a safe, positive work environment and place to conduct business where everyone is treated with respect and dignity.

Discrimination in the workplace and/or towards patrons is unacceptable and against the law. It will not be tolerated in any form.

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DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 4: Complaint Process and Procedures

This section identifies procedural components that your organization can incorporate into your policy, or provide for in a separate procedural manual. The sections referred to are from Section 1: Anti-Discrimination Template.

1.0 POLICY-SPECIFIC SUGGESTIONS

1.1 Accommodation Process

Under 6.4 - Undertakings – Accommodation, you may include your organization's specific accommodation procedures which might include:

- A step-by-step procedure for handling accommodation requests;
- A procedure for addressing issues where someone might need accommodation, but has not requested it.[7]

1.2 Complaint Process and Procedures

A step-by-step complaints handling procedure will help to ensure that all matters are dealt with similarly and therefore fairly. This procedure could be incorporated directly into 8.0 - Complaint Process and Procedures. If you do not take this step, ensure that you have a procedure in mind that will be followed consistently. Your organization should handle all complaints the same way and dismiss the unsubstantiated complaints. Never be dismissive of a complaint without looking into it.

Your organization could:

- Outline your organization's step-by-step process for handling complaints;
- Include the names of those people designated to handle different portions of the complaint process;
- Include the process for dismissing/not bringing forward complaints;
- Include specific timelines for the steps of the complaints process;
- Develop organization-specific procedures with respect to mediation, investigation and decision-making. Please refer to Section 2 - Handling Discrimination Complaints to guide you.

1.3 Timelines

Your organization may wish to pre-determine timelines for investigations, appeals, etc. in order for complainants to know exactly what to expect and to ensure that matters get dealt with in a timely manner and do not "get away" from you at the organizational level.

1.4 Documentation

Pre-determined documentation procedures are beneficial for successful handling of

discrimination complaints. Your organization could include the following documentation procedures under 8.2.7 - Complaints Process and Procedures – Documentation:

- How to file documentation[8];
- Where to file documentation[9];
- Document retention timelines[10];
- Dismissed complaint document retention[11];
- If your organization is a unionized environment your collective agreement may have a document retention clause. Non-unionized organizations may have document retention clauses within their hiring contracts.

1.5 Outcome/Remedy Expectations

Your organization may wish to pre-determine acceptable outcomes and remedies under 8.2.8 - Complaints Process and Procedures – Outcomes and Remedies. If you pre-determine some acceptable remedies you should indicate that those remedies are only examples, and your organization will consider matters on a case-by-case basis.

1.6 Discipline

Your organization may wish to pre-determine some disciplinary examples for certain discriminatory acts and include them under 8.2.9 - Complaints Process and Procedures – Discipline. While it is impossible to be exhaustive, listing some examples may impress upon your employees how serious you are about preventing discrimination in your workplace. You must ensure that the discipline matches the act and falls within legal limits as determined by case law or legislation.

1.7 Reporting Back

Your organization may wish to include the following reporting procedures under 8.2.10 - Complaint Process and Procedures – Reporting Back:

- A standard form for reports
- Where reports will be filed on your electronic system. They should be kept separate from the common drive.
- How long reports will be retained, and where?[12]
- "Follow-up" procedures[13]
- How your organization will present the report to all employees when the matter involves systemic discrimination[14]

1.8 Appeal process

Your organization could include the following appeal process procedures under 8.2.11 - Complaint Process and Procedures – Appeal Process:

- Timeframes to appeal decisions;
- The person responsible for handling appeals within your organization;
- An appeal review process, i.e. will people be re-interviewed or will an independent source analyze the evidence already compiled?

2.0 GENERAL SUGGESTIONS

2.1 Individuals Responsible

Your organization may wish to develop an "Individuals Responsible" section within your Anti-Discrimination Policy. Alternatively, your organization could simply identify the individuals responsible in each related section of the policy. Your organization may also wish to include more specific rights and responsibilities for designated individuals responsible than are currently outlined.

2.2 Sections Specific to Your Organization

Dependent upon your organization, you may wish to change your Anti-Discrimination Policy to include specific sections. For example, if you are an educational institution:

- You may want to revamp certain sections such as 5.0 Rights and Responsibilities to include subheadings outlining the responsibilities for the principal, teachers, staff, students, visitors to the school, etc.
- You may change section 5.4 - Clients/Patrons to address students, and what your educational institution will do with respect to students who disrespect teachers/staff based upon one of the prohibited grounds.

DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 5: Designating Individuals Responsible for Your Anti-Discrimination Policy

This section contains tips for your organization to consider when designating responsibility to individuals with respect to components of your Anti-Discrimination Policy. In particular, these tips apply to designation of:

- Persons accepting complaints
- Mediators
- Investigators
- Decision-makers
- Persons taking appeals
- Persons reviewing appeals

IN GENERAL...

The Organization

Dependent upon the size and structure of your organization, the roles listed above may be designated to a number of people, or to only one or two persons. When deciding whom to designate, some considerations may include:

- The size of your organization;
- Whether or not your human resources department can recommend an adequate designee. If you are a small organization, is there anyone within the organization whom people will feel comfortable confiding in? If not, will the organization consider use of an outside person to handle the complaints and/or the process?
- If the designee is a manager, can (s)he act impartially?
- Whether there may be concerns about individuals designated to handle any of the roles.

Choosing the Right Individual(s)

There are a number of considerations when designating individuals to handle any of the various roles:

- Who is the most unbiased person within the organization?
- Who will people feel most comfortable dealing with?
- Who is best able to handle confidential matters?

- What information/training will your organization provide to designees?
- Will the designations be included in job descriptions and become part of "paid work"? If not, how will your organization deal with the time these individuals spend on complaints?

MORE SPECIFICALLY...

Persons accepting complaints

- Having more than one person accepting complaints would assist in situations where a person designated to accept complaints has a complaint against him/her.

Mediators

- Are the persons designated to accept complaints also conducting mediations?
- Can or will your organization hire outside, professional mediators?

Investigators

- Where possible, different individuals should conduct the mediation and investigation processes. This would be up to your organization to determine. In a small organization, the same person handling the entire matter may not be to the liking of all employees.
- The complaint may face a higher likelihood of ending up at an outside agency if the person designated does not maintain an extremely high degree of professionalism and impartiality.

Decision Makers

- The Saskatchewan Human Rights Commission recommends that, where possible, the investigations and decision-making be done by two different people.

Person accepting appeals

- Where possible, the individual designated to take appeals should be someone who has not been involved in the process up to the point of appeal. If this is impossible, always ensure the individual acts with the highest degree of professionalism and impartiality.

Persons reviewing appeals

- The persons reviewing appeals should have as little knowledge as possible about the history of the matter and act with a high degree of professionalism and impartiality.

SASKATCHEWAN HUMAN RIGHTS COMMISSION

DEVELOPING AN ANTI-DISCRIMINATION POLICY
Section 6: Making Your Policy Work

Once you have drafted a policy, it is time to take action. Use the following checklist and planning guide to set out your policy implementation plan.

Use the Action Taken space to outline what your organization has already done and the ***Next Steps*** space to plan further steps to take. Suggestions for ***Next Steps*** are provided in brackets for your consideration.

Has your organization remembered to…

- **make it clear to all staff that discrimination will be taken seriously?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(Management statement of support for policy and intolerance to discrimination; clearly outline consequences of discrimination; describe who to contact if there is a question or concern about the policy)

- **take steps to implement your policy and not just post it?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(Develop a clear action plan for when complaints arise - you can incorporate the procedures right into your policy; outline plan for preventative measures; in-house staff education on rights and responsibilities; post policy in common place; incorporate policy into procedures manual; provide policy and explanation to all new and existing staff)

- **ensure all managers and supervisors understand their responsibilities?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(In-house management training; incorporate procedures and responsibilities into your policy; provide policy to all management; provide direction regarding implementation, responsibility, plan ownership, and expectations)

- **involve the union when applicable?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(Union discussion on policy and human rights obligations of unions; joint union-management committees; union representation provided during complaint investigation; staff policy training.)

- **develop *prompt* investigative or ameliorative measures?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(Include timelines on action items - see SHRC resource "Handling Discrimination Complaints")

- **communicate the anti-discrimination policy to all staff?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

(In-house staff education; make an "official" initial declaration and introduction of your organization's policy; post policy or notice about your policy if your policy is too lengthy to post in its entirety (if this is the case, your notice should contain a reference to where the entire policy is located) in a common place; provide policy and explanation to all new and existing staff; provide staff with the opportunity to review the policy and ask questions.)

- **designate staff to answer questions on the policy at any time?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

- **provide appropriate training to those responsible for handling complaints (investigations, mediations, appeals, etc) and implementing the policy?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

- **determine when and how to obtain an outside mediator or investigator?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

- **ensure *ongoing* awareness and training for all employees on discrimination?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

- **check for discriminatory posters, photos, and any other offensive materials throughout the organization?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

- **revamp discriminatory practices and procedures?**

Action Taken: _____ **Next Steps:** _____

_____ _____

_____ _____

_____ _____

Endnotes:

[1] http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S24-1.pdf

[2] http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/O1-1.pdf

[3] The definition of harassment is contained in s. 2(l) of *The Occupational Health And Safety Act, 1993.*

[4] http://www.shrc.gov.sk.ca/

[5] http://www.wcbsask.com/

[6] http://www.labour.gov.sk.ca/Default.aspx?DN=9428e839-c6e6-42ab-831b-f737e314590c

[7] For example, if there is reason to suspect that someone may need alcohol treatment

[8] Will you have a system for managing complaints? Will documentation be placed on individual's personnel files pending mediation, investigation, and decision?

[9] Will you keep documentation of discrimination complaints separate and apart from any other information?

[10] How long will your organization keep documentation on file?

[11] If a complaint is "dismissed" for any reason, what will you do with the documentation from the investigation? This information should not go on the alleged discriminator's file as the complaint was not substantiated.

[12] The "where" may depend upon whether there has been a finding of discrimination or it has been dismissed or the matter has been mediated. For example, your organization may not want to include a report indicating a dismissal of allegations on the alleged discriminator's file.

[13] Your organization may want to develop a mechanism through which to monitor the "next steps" referred to under Section 1, 8.2.10.

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